

## **BY-LAWS**

### **BOARD OF ZONING APPEALS FAIRFAX COUNTY, VIRGINIA**

#### **AUTHORITY**

The Fairfax County Board of Zoning Appeals exists under authority granted by state statute codified at Virginia Code § 15.2-2308. It has the authority to adopt rules and forms for its procedures, consistent with ordinances of the locality and general laws of the Commonwealth, under Virginia Code § 15.2-2308 (C) and Fairfax County Zoning Ordinance Section 8103.3. The BZA has the power to adopt a schedule of meetings and provide for alternative dates when weather or other conditions makes meeting hazardous, under Virginia Code § 15.2-2309 (8). The BZA may not entertain a motion for reconsideration due to Fairfax County Zoning Ordinance Section 8100.1 (C) (6).

#### **DEFINITIONS**

As used in these By-laws, the following defined terms have the meanings provided unless the context clearly requires a different meaning. Undefined terms that are defined in the applicable portions of the Code of Virginia have the meanings assigned there.

*Abstention* occurs when a member does not vote, even though present at the meeting, whether or not the member states a reason for not voting.

*After-agenda items* are those handled in accordance with Article III, § 6 (e) of these By-laws.

*BZA* means the Board of Zoning Appeals of Fairfax County, Virginia.

*County staff* means the County employees and officers assigned to manage matters brought before the BZA.

*Disqualification* occurs when a member is legally prohibited from voting.

*Recusal* occurs when a member declines to vote in accordance with Article III, § 5 (e)(iii) of these By-laws.

*Summons* means a requirement for a witness to appear pursuant to the Code of Virginia and Article VI, § 7 of these By-laws.

**ARTICLE I. MEMBERSHIP**

1. The Board of Zoning Appeals consists of seven (7) regular members and up to three (3) alternates appointed by the Circuit Court in accordance with the Code of Virginia.
2. Alternates: The rights and privileges of the alternates are as follows:
  - a. A regular member who anticipates being absent from or having to abstain from any action at a meeting must notify the BZA Chair 24 hours prior to the meeting of such fact. The Chair must select an alternate to serve in the absent or abstaining member's place for that meeting, and the records of the board must so note. When so selected, such alternate may vote on any application in which a regular member abstains at that meeting.
  - b. The BZA Chair must strictly follow a rotation of selecting alternates, if there are more than one, by contacting them in the order listed in the rotation, giving them a reasonable time to accept or decline their selection, and then proceeding with the next alternate in the rotation if the alternate does not respond or declines their selection. If more than one alternate may be needed, the Chair must follow the same process to contact a second and, if necessary, a third alternate.
  - c. When one of the regular members is absent or abstaining, the alternate selected to fill the place of the absent or abstaining member according to the process in Article I section 2.a., above, has all the rights and privileges of a regular member.
  - d. When all regular members are present and there are no regular members disqualified or recusing themselves, alternates may participate in discussion on applications and appeals but have no voting privileges in such matters.
  - e. If an alternate is selected to participate in a meeting but does not participate due to all regular members being present and not abstaining, that alternate will be next in the rotation noted in Article I section 2.a., above.

**ARTICLE II. ANNUAL MEETING; DUTIES OF OFFICERS**

1. The first meeting of the BZA in the calendar year will be its annual meeting, and the first items of business shall be as follows:

Election of Officers.

Appointment of persons to accept service on behalf of the BZA.

2. The Officers elected from the BZA membership consist of a Chair, a Vice-Chair, and a Secretary.
3. In the event any officer's position becomes vacant at any time during the year, an election must be held at the earliest opportunity to fill the vacancy.
4. The Chair presides at all meetings and hearings of the BZA. The Chair decides all points of order and procedure, subject to appeal to the full BZA, and appoints any committees and committee chairs that may be found necessary. The Chair and the Clerk have the authority to administer oaths.
5. The Vice-Chair assumes the duties of the Chair in the Chair's absence. In the absence of the Chair and Vice-Chair, the Secretary assumes the duties of the Chair. In the absence of the Chair, Vice-Chair and Secretary, an acting Chair must be selected by the members present to preside over the meeting.
6. The Clerk's duties are:
  - a. To prepare official correspondence at the direction of the BZA;
  - b. To send out notices required by these By-laws
  - c. To keep the minutes and records of the BZA's proceedings and other official actions;
  - d. To keep a file, which may be in a digital format, on each case that comes before the BZA;
  - e. To send copies of appeals and applications to the Planning Commission as required by the Zoning Ordinance;
  - f. To maintain other BZA records;
  - g. in response to Writs of Certiorari served upon the BZA, to prepare and file with the court, in a timely fashion, certified copies of the record of any BZA decision that has been appealed;
  - h. To prepare for the BZA's review the Annual Report, with final content and format approved by the BZA, to the Board of Supervisors and file it when approved by the BZA; and
  - i. To notify the BZA promptly of any appeals filed from actions of the BZA, any legal challenges to the BZA's actions, and any notices to the BZA.

7. The Secretary must notify the Circuit Court of any vacancies on the BZA and must perform duties as assigned by the BZA.

### **ARTICLE III. MEETINGS, QUORUM, VOTING, AND MINUTES**

1. The BZA holds its regular meetings on Wednesdays as shown on the BZA's adopted meeting schedule except when a meeting is cancelled as provided in these By-laws. Each regular meeting must begin at 9:00 a.m.
2. The Chair may call a special meeting by directing the Clerk to give at least five days' notice of such meeting to each member electronically or in writing at the member's electronic or home address on record.
3. All meetings are open to the public unless a closed meeting is held pursuant to the Virginia Freedom of Information Act.
4. Quorum.
  - a. A quorum is necessary to transact any BZA business. In the absence of a quorum, the BZA may not vote on any BZA business except adjournment. However, the BZA may engage in discussion of internal matters such as training, procedures, or personnel in open session without a quorum. The Clerk must record such discussion in the minutes.
  - b. Except as otherwise provided by law, a quorum consists of four members (i.e., a majority) of the BZA assembled in person. In determining the quorum, "members" include any alternates participating in the deliberations and voting pursuant to these By-laws.
5. Voting.
  - a. Except when the BZA adopts a different method of voting, all votes will be by roll call, with the Clerk or Deputy Clerk calling the roll. In the absence of the Clerk and Deputy Clerk, the Secretary or presiding officer must call the roll. The roll call includes any alternates present only when they are authorized to vote under these By-laws.
  - b. The concurring vote of four members (including any alternates and any members participating remotely, to the extent provided in these By-laws) is required to:
    - (i) grant variances and special permits;
    - (ii) reverse decisions or determinations of the Zoning Administrator (i.e., appeals);

- (iii) act contrary to recommendations made by the Planning Commission that an application for a special permit be denied or that specified conditions be prescribed in connection with a particular special permit or variance, to the extent required by the Fairfax County Zoning Ordinance ("Zoning Ordinance");
  - (iv) amend district maps;
  - (v) revoke special permits;
  - (vi) reject an appeal; or
  - (vii) amend these By-Laws.
- c. The concurring vote of a majority of all members present and voting, or such other greater number as may be required by the Code of Virginia is required to effect all other actions of the Board.
- d. Disclosure by a BZA member.
  - (i) A member must make a disclosure of the member's interest in a specific matter before the BZA when required by law.
  - (ii) Any disclosure must be announced and made a part of the record of the BZA prior to the case being heard or as soon as the basis for disclosure is discovered, except as otherwise provided by law.
- e. Disqualification and recusal of a BZA member.
  - (i) A member is disqualified to act on a specific matter before the BZA only as provided by law. The reason for disqualification must be made a part of the record of the BZA.
  - (ii) Members may recuse themselves from voting under any circumstance which in the opinion of the individual member would create an appearance of impropriety or unfairness. The decision to recuse must be entered into the record of the BZA, but a member need not disclose the reasons for the recusal.
  - (iii) Any disqualification or recusal must be announced and made a part of the record of the BZA prior to the case being heard or as soon as the basis for disqualification or recusal is discovered.

6. The order of business at all regular meetings of the BZA is as follows unless adjusted by majority vote of the BZA members present and voting:
  - a. Call to order.
  - b. Business of members of the BZA.
  - c. Consent agenda of minutes of previous meetings and deferral requests not opposed by County staff. Any BZA member may remove an item from the consent agenda prior to the vote on the consent agenda, which will result in that item being placed on the After-Agenda portion of the agenda. All remaining matters on the consent agenda are voted on as a block without discussion.
  - d. Consideration of incomplete appeal applications and applications in cases where County staff indicates that the BZA should not take the case, as provided by sections 2 and 3 of Article V of these By-laws.
  - e. Public hearings.
  - f. After-Agenda items, consisting of:
    - (i) matters deferred by the BZA,
    - (ii) administrative matters submitted by the Clerk or County staff,
    - (iii) consideration of requests for extensions of time,
    - (iv) items removed from the consent agenda, and
    - (v) inquiries of, and directives to, the Clerk, County staff, or the BZA attorney.
  - g. Adjournment.
7. The BZA may adjourn a regular meeting if all applications or other matters scheduled for hearing cannot be disposed of on the day set. Adjournment is mandatory six hours after the start of the regular meeting, unless waived by the BZA; and no later than eight hours after the start of the meeting. Agenda items not yet heard by the time of adjournment become agenda items on a following agenda; County staff, in coordination with the BZA Clerk, is responsible to promptly reschedule such postponed items and to readvertise them if required by law.

8. Special provisions addressing remote participation by BZA members are addressed in Article VIII and supplement or supersede the provisions of Article III as appropriate.
9. The Clerk of the BZA must prepare the draft agenda for each meeting in consultation with County staff. No matter placed on the BZA agenda may be removed without action by the BZA to remove it.
10. In the event of inclement weather or other conditions that require closure of the Fairfax Government Center (or such other location designated for the BZA's meeting in the notice of the meeting) or the grant of unscheduled leave to county employees, or if the chair (or vice-chair if the chair is unable to act) finds and declares that weather or other conditions are such that it is hazardous for members to attend the meeting, all agenda items not yet heard by the time of adjournment must be rescheduled; County staff is responsible to promptly reschedule such postponed items and to readvertise them if required by law.
11. The BZA will approve written minutes that will include, without limitation, the date, time, and location of the meeting; members present and absent; and a record of votes taken. Any record of member participation via electronic communication means will also include the remote location of the member and the type of electronic communication used, and will otherwise comport with Article VIII. Minutes may be in the form of a meeting agenda to which has been added a summary description on all matters proposed, deliberated, or decided.

#### ARTICLE IV. DUTIES

It is the duty of the BZA, in accordance with the provisions of the Code of Virginia, to hear and decide cases involving the following:

1. Variances in accordance with the provisions of the Zoning Ordinance and Code of Virginia.
2. Special permits in accordance with the provisions of the Zoning Ordinance and Code of Virginia.
3. Appeals from a decision of the Zoning Administrator, or other administrative officer, in accordance with the provisions of the Zoning Ordinance and Code of Virginia.
4. Applications for the interpretations of the district map where there is any uncertainty as to the location of the district boundary.
5. Revocations of special permits, on application of the Zoning Administrator.

**ARTICLE V. APPLICATIONS TO THE BZA**

1. All applications to the BZA for appeals, variances, and special permits must be made by submission through the current County application system... All other applications or requests, for which there is no application type supplied by the County must be made in writing. All applications must include all of the information required by the Zoning Ordinance before being scheduled for public hearing unless the Zoning Administrator or designee grants a submission waiver for such information. The Clerk must put on the BZA agenda an incomplete appeal application within 90 days of its filing as a Consideration item under section 6.d of Article III for the purpose of scheduling a public hearing or a deadline for completion of the application.
2. If the Department of Planning and Development believes that the BZA does not have the authority to hear an application or that it is untimely filed,, then the Department of Planning and Development must promptly schedule a Consideration item under section 6.d of Article III.

**ARTICLE VI. PROCESSING OF APPLICATION**

1. All applications must be filed with County Staff. The processing and scheduling of applications must comply with the requirements of the Fairfax County Zoning Ordinance and the Code of Virginia.
2. The Clerk of the BZA must notify the applicants in writing of the date, time and place of the scheduled public hearing. The Clerk of the BZA will notify the applicant by US Mail unless the applicant has provided an email address or similar means for electronic notification.
3. The Clerk must, in accordance with the Code of Virginia and the Zoning Ordinance, cause to be advertised by publication, in a newspaper of general circulation in the area of the application, the required legal notice of the application.
4. The applicant is responsible for fulfilling all applicable notice requirements to abutting and other property owners in accordance with applicable provisions of the Code of Virginia and the Zoning Ordinance.
5. County staff must prepare and distribute a staff report and any pertinent information to the BZA and the applicant, and the appellant and other person aggrieved before the scheduled public hearing.
6. The BZA, County staff, and applicants must comply with the Code of Virginia with respect to ex parte communications.



7. Upon timely application of County staff or an applicant/appellant, or on its own motion, the BZA may issue a summons to a witness to appear and give testimony in a case. The BZA's attorney must process such summons as provided by Virginia law.

## ARTICLE VII. THE HEARING

1. The Chair announces the public hearing and the subject matter:
  - a. The Chair may, in its discretion, remind all parties present that the Code of Virginia requires a concurring vote of four members of the BZA to approve a variance, to approve or revoke a special permit, and, in an appeal, to reverse the determination of the Zoning Administrator or other officer.
  - b. Cross-examination or questions of speakers testifying is permitted only by members of the BZA or with permission of the Chair.
  - c. The Chair or the Clerk swears in all County staff members and speakers wishing to testify.
  - d. The Chair requests the applicant to state their name and to reaffirm any affidavit previously submitted on their behalf.
2. The Chair calls on the County staff to identify the property, describe the application and background of the case, and present County staff's position, if applicable. The County staff's presentation is limited to ten minutes.
3. BZA members may pose questions to County staff members.
4. The Chair calls on the applicant or appellant and/or their authorized agent or attorney to present the applicant's or appellant's position. This presentation is limited to ten minutes.
5. BZA members may pose questions to the applicant or appellant and/or their authorized agent or attorney.
6. The Chair calls for testimony from any person present, including any party aggrieved under the Code of Virginia, emphasizing that testimony should be relevant and limited to the precise issue that is the subject of the hearing.
  - a. This testimony is limited to three minutes for individuals and five minutes for representatives of groups, e.g., civic, condominium and homeowners' associations.

- b. Each individual, organization, or group is limited to one presentation unless the Chair determines otherwise.
  - c. Witnesses may participate by video conference only upon prior application to the County staff and the County staff's determination that the audiovisual connection is sufficient to make the witness intelligible to the BZA and audience. Witnesses may not participate by phone or audio link without video.
7. The Chair calls on the applicant or appellant and/or their authorized agent or attorney to offer rebuttal or additional remarks, if desired.
  8. The Chair calls on County staff to offer rebuttal or additional remarks, if desired.
  9. BZA members may pose final questions to applicant, appellant and/or their authorized agent or attorney, or the County staff.
  10. The Chair must conduct the hearing in a fair and orderly manner. The time periods set forth herein may be modified at the discretion of the BZA provided the BZA offers an equal amount of time in a hearing on the case to the applicant, appellant, or other person aggrieved under the Code of Virginia, and the County staff. Questions by the BZA will not count against a speaker's time.
  11. The Chair closes the public hearing.
  12. The BZA may discuss the matter and take action. Decisions, action to be taken, and orders of the BZA must be taken in the form of a motion or resolution. The form and scope of the BZA decision must be in accordance with the Code of Virginia.
  13. A decision of the BZA is considered a "final decision" for purposes of appeal when the BZA has made a decision that: (1) resolves the merits of the application before the BZA, or (2) effects a dismissal of the case with prejudice. The 30 day appeal period to the Circuit Court commences upon the final decision of the BZA.
  14. The final decision of the BZA must be promptly filed with the Clerk and become a part of the BZA's public record. The Clerk must promptly prepare and provide to the applicant or appellant the BZA's final decision on the application.
  15. All meetings must be conducted in accordance with these By-Laws, the Fairfax County Zoning Ordinance, the Code of Virginia, and the current edition of Robert's Rules of Order Newly Revised, as adapted

for small boards, to the extent that Robert's Rules of Order Newly Revised is not inconsistent.

16. After discussion on the matter, the BZA may postpone a formal vote on the matter so that one or more members may write out a motion for BZA action later in the meeting or at a subsequent meeting. A member absent from the hearing and discussion of a matter may vote on an action after reviewing the written submissions and the recording of the meeting.

#### **ARTICLE VIII. SPECIAL PROVISIONS FOR REMOTE PARTICIPATION OF MEMBERS**

1. Members of the BZA may participate from remote locations in meetings where a quorum is physically assembled at a single meeting place when consistent with Virginia law. For purposes of determining whether a quorum is physically assembled, a BZA member who is a person with a disability as defined in Virginia Code § 51.5-40.1 and uses remote participation counts toward the quorum as if the member was physically present, and a BZA member who is a caregiver for a person with a disability and uses remote participation counts toward the quorum as if the individual was physically present.
2. Members of the BZA may participate from remote locations when no quorum is physically assembled at a single meeting place only to the extent authorized under Virginia law.
3. The Clerk to the BZA is responsible for implementing this policy on remote participation meetings.
4. This policy must be applied strictly and uniformly, without exception, to the entire membership and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting.
5. Remote participation is subject to the approval of the Chair, appealable to the body as a whole in accordance with Robert's Rules of Order.
6. On or before the day of a meeting, a member of the BZA requesting to participate remotely pursuant to § 2 of this Article VIII must notify the Chair that:
  - (a) the member has a temporary or permanent disability or other medical condition that prevents physical attendance,
  - (b) a medical condition of a member of the member's family requires the member to provide care that prevents the member's physical attendance or the member is a caregiver who must provide care

for a person with a disability at the time the public meeting is being held thereby preventing the member's physical attendance;

(c) the member's principal residence is more than 60 miles from the meeting location identified in the required notice for such meeting; or

(d) the member is unable to attend the meeting due to personal reasons, in which case the member must identify with specificity the nature of the personal reason.

7. A member's participation from a remote location will only be approved if the member's voice is clearly audible to BZA members and citizens at the BZA's central meeting location and if the member can hear persons speaking into the microphones at that location.
8. If a member's participation from a remote location is disapproved because such participation would violate the policy set out in this resolution, such disapproval must be recorded in the minutes with specificity.
9. Each member's remote participation due to personal reasons is limited each calendar year to two meetings or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater.
10. Members participating in person must be physically assembled at the meeting location that was announced in the notice of the meeting or, if no location was specified, at the space in the Fairfax Government Center designated for the BZA meeting.
11. The BZA must record in its minutes all instances of remote participation, and the remote location from which a member participates. The remote location need not be open to the public and may be identified in the minutes by a general description.
12. If participation is approved pursuant to subdivision 6.a. or 6.b. of this Article VIII, the BZA must include in its minutes the fact that the member participated through electronic communication means due to a (i) temporary or permanent disability or other medical condition that prevented the member's physical attendance or (ii) a family member's medical condition that required the member to provide care for such family member, thereby preventing the member's physical attendance or (iii) the member is a caregiver who must provide care for a person with a disability at the time the public meeting is being held thereby preventing the member's physical attendance. If participation is approved pursuant to subdivision 6.c., the BZA must also include in its minutes the fact that the member participated through electronic communication means due to the distance between the member's principal residence and the meeting location. If participation is approved pursuant to subdivision 6.d., the BZA

must also include in its minutes the specific nature of the personal matter cited by the member.

**ARTICLE IX.      RECORDS**

1. A file containing all relevant material and decisions, including any final decision, relating to each case must be kept by the County staff as part of the records of the BZA, which may be in a digital format.
2. All records of the BZA are public records subject to public release unless they are exempted from disclosure under the Virginia Freedom of Information Act. County Staff must assert any valid exemptions on behalf of the BZA. Only the BZA may waive any valid exemption for BZA records.

**ARTICLE X.      SEVERABILITY**

If any word, clause, sentence, article, section, subsection or other part or parts of these By-Laws is held by a court of competent jurisdiction to be unconstitutional or otherwise invalid, such unconstitutionality or invalidity does not affect any of the remaining parts of these By-Laws, nor does it affect any application of these By-Laws that may be given effect without the unconstitutional or invalid parts, and to this end, all provisions of these By-Laws are hereby declared to be severable.

**ARTICLE XI.     ADOPTION**

These By-Laws have been adopted by the unanimous vote of the Board of Zoning Appeals, all members thereof being present, on the 24<sup>th</sup> day of June 1969.

Revised: 3-10-70   (Signed) Daniel Smith, Chair

(Signed) Betty Haines, Clerk

Revised: 8-1-75    (Signed) Daniel Smith, Chair

(Signed) Jane Kelsey, Clerk

Revised: 9-23-80   (Signed) Daniel Smith, Chair

(Signed) Sandra L. Hicks, Clerk

Revised: 5-18-82   (Signed) Daniel Smith, Chair

(Signed) Sandra L. Hicks, Clerk

Revised: 1-25-83 (Signed) Daniel Smith, Chair  
(Signed) Sandra L. Hicks, Clerk

Revised: 11-6-86 (Signed) Daniel Smith, Chair  
(Signed) Betsy S. Hurtt, Clerk

Revised: 1-10-91 (Signed) Daniel Smith, Chair  
(Signed) Betsy S. Hurtt, Clerk

Revised: 1-26-93 (Signed) Daniel Smith, Chair  
(Signed) Betsy S. Hurtt, Clerk

Revised: 6-27-06 (Signed) John P. DiGiulian, Chair  
(Signed) Kathleen A. Knoth, Clerk

Revised: 5-1-07 (Signed) John F. Ribble III, Chair  
(Signed) Kathleen A. Knoth, Clerk

Revised: 11-17-10 (Signed) John F. Ribble III, Chair  
(Signed) Kathleen A. Knoth, Clerk

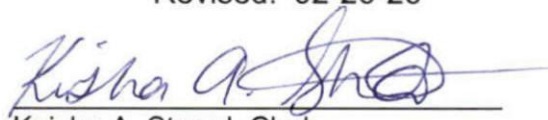
Revised: 06-20-16 (Signed) John F. Ribble III, Chair  
(Signed) Lorraine A. Giovinazzo, Clerk

Revised: 01-15-20 (Signed) John F. Ribble, III, Chair

(Signed) Lorraine A. Giovinazzo, Clerk Revised: 07-15-2020:

Revised: 10-25-23

Revised: 02-26-25

  
Keisha A. Strand, Clerk  
Board of Zoning Appeals

  
Karen L. Day, Chair  
Board of Zoning Appeals